U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 04 January 2007

IN THE MATTER OF:

E.V.,
Claimant,

v. Case No.: 2005-BLA-5642

MCDOWELL MINING, INC.,
Employer,

and

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS,
Party-in-Interest.

APPEARANCES: Andrew Delph, Esq.
For the Claimant

Natalee Gilmore, Esq.
For the Employer

BEFORE: Thomas M. Burke
Associate Chief Administrative Law Judge

DECISION AND ORDER AWARDING LIVING MINER'S BENEFITS

This case arises from a claim for benefits filed under the "Black Lung Benefits Act," Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, at 30 U.S.C. § 901 *et seq.* ("Act"), and the implementing regulations at 20 C.F.R. Parts 718 and 725 (2005). A hearing was held in Winston-Salem, North Carolina, on April 25, 2006. The decision in this matter is based upon the testimony of Claimant and Claimant's wife at the hearing, all documentary evidence admitted into the record at the hearing, and the post-hearing arguments of the parties. The documentary evidence admitted at the hearing includes *Director's Exhibits* (*Dx.*) 1-25, *Claimant's Exhibit* (*Cx.*) 1[1], and *Employer's Exhibits (Ex.)* 1-3.[2]

[1] Per agreement of the parties at the hearing, the record was held open post-hearing for the submission of Claimant's Exhibit 2 (*Cx*. 2). *Tr*. at 8-9.

[2] While the transcript indicates the submission of four exhibits by the Employer, the fourth exhibit, a corrected page from a deposition, was to be submitted post-hearing. *Tr*. at 25-26. Employer never submitted the fourth exhibit. Consequently, only three exhibits are in the record for the Employer.

Overview of the Black Lung Benefits Program

The Black Lung Benefits Act is designed to compensate those miners who have acquired pneumoconiosis, commonly referred to as "black lung disease," while working in the nation's coal mines. Those miners who have worked in or around mines and have inhaled coal mine dust over a period of time may contract black lung disease. This disease may eventually render the miner totally disabled or contribute to his death.

Procedural History

1. Claimant filed his first claim for benefits on February 12, 1997. *Dx*. 1. The claim was denied by the District Director on April 9, 1997, for failure to establish any element of entitlement. *Dx*. 1. After Claimant waived his right to a hearing and requested a decision on the record, Administrative Law Judge Daniel A. Sarno, Jr., issued a *Decision and Order Denying Benefits* on May 29, 1998. *Dx*. 1. Judge Sarno found that Claimant failed to establish the presence of pneumoconiosis. *Dx*. 1.

2. Claimant filed his second claim for benefits on July 13, 1999. *Dx*. 2. The District Director denied this claim on December 14, 1999, for failure to establish total disability due to pneumoconiosis. *Dx*. 2. Claimant filed a request for modification with OWCP on November 29, 2000. *Dx*. 2. On December 8, 2000, the District Direct issued a *Proposed Order* denying Claimant's request for modification. *Dx*. 2. By letter filed on December 28, 2000, Claimant requested a formal hearing before an administrative law judge.[3] *Dx*. 2. The District Director decided to hold an informal conference beginning on January 22, 2001. *Dx*. 2. On March 19, 2001, the District Director issued a *Memorandum of Informal Conference* in which he affirmed the December 8, 2000, *Proposed Order* denying Claimant's request for modification. *Dx*. 2.

3. Claimant filed his third and instant claim for benefits on November 24, 2003. *Dx*. 4. On November 28, 2004, the District Director issued a *Proposed Decision and Order – Denial of Benefits* for failure to establish total disability caused by pneumoconiosis. *Dx*. 19. Claimant requested a formal hearing before an administrative law judge by letter dated December 4, 2004. *Dx*. 21.

4. The instant claim was referred to this Office for adjudication on March 7, 2005. *Dx*. 23.

5. A hearing was held in Winston-Salem, NC, on April 25, 2006. *Tr*. at 1.

Issues Presented for Adjudication and Stipulations

[3] It is noted that there was no hearing before an administrative law judge in Claimant's second claim, despite his request. The effect of the District Director's failure to forward the claim will be discussed below.

The issues listed as contested on the CM-1025 include: (1) whether Claimant suffers from pneumoconiosis; (2) arising out of coal mine employment; (3) whether he is totally disabled; and (4) whether Claimant's total disability was due to pneumoconiosis. *Dx.* 23. In addition, the length of coal mine employment is at issue. *Dx*. 23. Claimant's application asserted fifteen years of coal mine employment. *Dx*. 4. The District Director found twelve years. *Dx*. 23. By letter submitted January 27, 2006, the Employer contested the length of coal mine employment as well. Also at issue is whether the evidence establishes a material change in conditions per 20 C.F.R. § 725.309(c), (d). *Dx*. 23. Finally, the Employer contests whether Claimant's most recent period of cumulative employment of not less than one year was with McDowell Mining, Inc. *Dx*. 23.

At hearing, the Employer stipulated to twelve years of coal mine employment. *Tr*. at 5. Claimant stipulated that the disabled adult child from Claimant's first marriage is not a dependent. *Tr*. at 24.

The Standard for Entitlement

Because this claim was filed after April 1, 1980, it is governed by the regulations at 20 C.F.R. Part 718 (2005).[4] Under Part 718, Claimant bears the burden of establishing each of the following elements by a preponderance of the evidence: (1) he suffers from pneumoconiosis; (2) arising out of coal mine employment; (3) he is totally disabled; and (4) his total disability is caused by pneumoconiosis. *Gee v. W.G. Moore & Sons*, 9 B.L.R. 1-4 (1986) (en banc); *Baumgartner v. Director, OWCP*, 9 B.L.R. 1-65 (1986) (en banc). Failure to establish any one of these elements precludes entitlement to benefits.

Findings of Fact

1. Claimant was born November 23, 1951. *Dx*. 4. He completed the ninth grade. *Dx*. 4. Claimant married his first wife on November 1, 1984. The couple divorced on June 14, 1989. *Dx*. 1. Claimant has a disabled, adult daughter who is not dependent upon him for support. *Tr*. at 19-20, 23; *Dx*. 10. He married his second and current wife, R.F.V., on July 23, 1989.[5] *Dx*. 1. Claimant's stepdaughter, H.D.L., was born September 26, 1983. *Dx*. 1. His stepson, M.D.L., was born March 1, 1986. *Dx*. 1. Claimant did not adopt his stepchildren, but he did support them as his own. *Tr*. at 29-30. They are no longer dependent upon Claimant for support. *Tr*. at 20.

2. Claimant began working in the coal mines in 1970. *Dx*. 7. While Claimant was primarily a roof bolter, his other varied jobs in the mines included running the shuttle car, setting jacks on Wilcox and Jefferson miners and on German plows, working as a timberman, and other

[4] As Claimant last engaged in coal mine employment in the State of Virginia, appellate jurisdiction of this matter lies with the Fourth Circuit Court of Appeals. *Shupe v. Director, OWCP*, 12 B.L.R. 1-200, 1-202 (1989) (en banc).

[5] The date of Claimant's marriage to his second and current wife was determined from the marriage certificate in the record. *Dx*. 1. It is noted that on all three applications for benefits, Claimant noted the date of marriage to his second and current wife as July 24, 1990. *Dx*. 1, 2, 3.

general inside work. *Tr*. at 12; *Dx*. 1, 2, 5, 6. Eighty-five to ninety percent of his time working in the mines was as a roof bolter. *Tr*. at 13. Claimant's last coal mining job as a roof bolter involved drilling into various types of rock and carrying, bending, and setting roof bolts. *Tr*. at 13-16. At times, Claimant had to carry bundles of ten steel roof bolts that were eight-feet long. *Tr*. at 14.

3. Claimant has difficulty with his breathing. *Tr*. at 16-17. He can walk at a slow pace for no more than 75 feet before running out of breath. *Tr*. at 17. A faster pace of walking causes him to lose his breath. *Tr*. at 17. Claimant becomes exhausted after climbing fifteen steps. *Tr*. at 17. He currently sees a doctor and takes prescription medication, including Advair, for his breathing problems. *Tr*. at 17-18, 24.

4. Claimant has received treatment for a heart condition and is currently on heart medication. *Tr*. at 22.

5. Claimant smokes half a pack of cigarettes per day. *Tr*. at 18. He has smoked for thirty years. *Tr*. at 19. In the past, Claimant has smoked two packs a day. *Tr*. at 19. He testified that he has reduced the number of cigarettes he smokes each day and that he is intending to quit. *Tr*. at 19.

6. Claimant worked for McDowell Mining ("Employer") from 1979 to 1983. *Dx*. 7. McDowell Mining was Claimant's last employer for whom he worked for at least one year. *Tr*. at 20.

7. Claimant also worked in furniture factories. *Tr*. at 20. He was not exposed to dust while working for these companies. *Tr*. at 20-21.

8. The last job for which Claimant earned wages was as a coal miner for Misty-Bec Coal Corporation in April of 1995. *Tr*. at 21; *Dx*. 4, 7. He stopped working for Misty-Bec when he sustained a back injury in a mining accident. *Tr*. at 21; *Dx*. 4. In the accident, a rock fell on his back, leaving him disabled. *Dx*. 6. Claimant receives Social Security Disability for his back injury. *Tr*. at 21.

Subsequent Claim

Claimant has filed three claims for black lung benefits. Ordinarily, the instant claim would be treated as a subsequent claim. A subsequent claim is one filed "more than one year after the effective date of a final order denying a claim previously filed by the claimant . . . ." 20 C.F.R. § 725.309(d). However, Claimant's second claim is still pending because the District Director did not forward the claim upon Claimant's request for a formal hearing before an administrative law judge. *See Dx*. 2. Part 20 C.F.R. §725.309(b) provides:

> If a claimant files a claim under this part while another claim filed by the claimant under this part is still pending, the later claim shall be merged with the earlier claim for all purposes. For purposes of this section, a claim shall be considered pending if it has not yet been finally denied.

Claimant's second claim is still pending because it was not "finally denied." *Id*. Under 20 C.F.R. § 725.419(a), if a party requests a hearing within thirty days of the issuance of a proposed decision and order, "the District Director shall refer the claim to the Office of Administrative Law Judges." *See also, Plesh v. Director, OWCP*, 71 F.3d 103, 109-10 (3d Cir. 1995) (Claimant's handwritten note stating "I appeal this as of now" constituted a request for a formal hearing requiring the Director to refer all contested issues to an administrative law judge for resolution). Claimant submitted his request for a formal hearing on December 28, 2000, following the District Director's denial of modification request issued December 8, 2000. Thus, Claimant filed his request within thirty days. The District Director, through the Claims Examiner, acknowledged receipt of Claimant's hearing request in an undated letter, but the claim was not referred to the Office of Administrative Law Judges. Accordingly, Claimant's second claim remains pending and shall be merged with the instant third claim for all purposes.

Because the merged second and third claims are subsequent to the first filed in 1997, the provisions at 20 C.F.R. § 725.309 (1998)[6] require a preliminary determination "that there has been a material change in conditions" since the denial of the first claim; otherwise, the subsequent claim must be denied. By *Decision and Order Denying Benefits* issued on May 29, 1998, Administrative Law Judge Daniel A. Sarno, Jr. found that Claimant failed to establish pneumoconiosis. *Dx*. 1. In rendering his decision, Judge Sarno considered all of the relevant evidence submitted with the first claim.

As discussed below, the newly submitted evidence supports a finding that Claimant suffers from coal workers' pneumoconiosis. As a result, Claimant has established a material change in condition since his first claim. Thus, the entire record must be reviewed *de novo* to determine whether Claimant is entitled to benefits.

A review of Judge Sarno's *Decision* and the record upon which it was based revealed that the *Decision* contains an accurate analysis and discussion of the evidence submitted in the first claim. Therefore, the findings of fact are incorporated here by reference. The present claim was filed more than five years after Judge Sarno's *Decision* and is supported by evidence that post-dates the evidence considered by Judge Sarno by six years to nine years. Given the significant lapse in time, greatest weight will be accorded to the most recent evidence of record since it contains a more accurate evaluation of Claimant's current condition. *See Gillespie v. Badger Coal Co*., 7 B.L.R. 1-839 (1985); *Bates v. Director, OWCP*, 7 B.L.R. 1-113 (1984).

Length of Coal Mine Employment

[6] The pre-amendment standard of "material change in conditions" is applicable in this case because 20 C.F.R. § 725.309 is excepted from application of the amended regulations. 20 C.F.R. § 725.2(c). Nevertheless, before the amended regulations, the Fourth Circuit, the circuit in which the instant claims arises, interpreted "material change in conditions" as requiring the miner to establish a material change in one of the elements previously adjudicated against him. *See Lisa Lee Mines v. Director, OWCP*, 86 F.3d 1358 (1996). Thus, the Fourth Circuit's interpretation of pre-amendment § 725.309 as requiring a change in a previously unestablished element of entitlement is consistent with the standard now found in the amended regulations.

The applicability of various statutory and regulatory presumptions depends upon the length of a miner's coal mine employment. Claimant bears the burden of proof in establishing the duration of his coal mine work. *See Shelesky v. Director, OWCP*, 7 B.L.R. 1-34, 1-36 (1984); *Rennie v. U.S. Steel Corp*., 1 B.L.R. 1-859, 1-862 (1978). Claimant alleged fifteen years of coal mine employment in his application for benefits. *Dx*. 4. At the hearing, he testified to "about sixteen years." *Tr*. at 10. Claimant's Social Security earnings record does not provide starting or ending dates of employment. Instead, the record separates Claimant's yearly earnings into quarters for the years 1970 through 1977, but merely lists the total earnings for the years 1978 through 1995. *Dx*. 7. Counting financial quarters of employment is a reasonable way of determining length of employment. *Tackett v. Director, OWCP*, 6 B.L.R. 1-839 (1984). Claimant's Social Security earnings record shows 27 financial quarters of coal mine employment for the years 1970 to 1977. *Dx*. 7. Twenty-seven quarters translates into six years, three months of coal mine employment during the period 1970 to 1977.

As Claimant's Social Security earnings record does not separate the years 1978 through 1995 into financial quarters, an alternative method must be used to calculate the length of coal mine employment for these years. The regulations set out a method for administrative law judges to use for calculating the length of coal mine employment where the starting and ending dates are unknown. 20 C.F.R. § 725.101(a)(32)(iii). Under the regulations, a year of coal mine employment means a calendar year of 365 days or partial periods of a year in which the miner has worked for at least 125 "working days." 20 C.F.R. § 725.101(a)(32). A year in which the miner worked fewer than 125 days is credited as a "fractional year" based on the ratio of actual days worked to 125 days. 20 C.F.R. § 725.101(a)(32)(i). The regulations provide a formula in which the miner's yearly coal mining income is divided by the coal mine industry's average daily earnings for that year. 20 C.F.R. § 725.101(a)(32)(iii). The result equals the number of work days for that year. Under the 126 day rule describe above, any resulting calculation of 125 days or more is credited as a year of coal mine employment. 20 C.F.R. § 725.101(a)(32). The coal mine industry's average daily earnings can be found in the Office of Workers' Compensation Programs Coal Mine (BLBA) Procedure Manual.[7] The following table reflects Claimant's earnings from his Social Security records for the relevant years 1978 through 1983 and 1995, the average daily wage provided by the BLBA table, and the resulting calculations of work days and fractional years based upon the formulas provided by the regulations:

Year	Average Daily Wage	Coal Company	Claimant's Annual Earnings	Work Days[8]	Fractional Year[9]
1978	$80.31	Jewell Ridge Coal Corp.	$4739.86	59	0.47
1979	$87.03	H & O Mining, Inc.	$10,090.72	116	0.93
		McDowell Mining, Inc.	$6,562.26	75	0.6
1980	$87.42	McDowell Mining, Inc.	$21,606.31	247	1 year[10]

[7] *See* Attachment 1.

[8] "Work Days" equals Claimant's annual earnings from the specified coal mining company divided by the average daily wage. 20 C.F.R. § 725.101(a)(32)(iii).

[9] "Fractional Year" equals the calculated work days divided by 125 days. If a result is greater than 1, the miner receives no more than 1 year of coal mine employment credit. 20 C.F.R. § 725.101(a)(32)(i).

[10] The fractional year calculation for the 1980 through 1983 McDowell Mining, Inc. earnings is inapplicable because the working days for these four years exceed 125.

1981	$96.80	McDowell Mining, Inc.	$17,912.41	185	1 year
1982	$101.59	McDowell Mining, Inc.	$17,035.47	168	1 year
1983	$109.76	McDowell Mining, Inc.	$17,958.96	164	1 year
1995	$147.52	Double H Coal Co. Inc.	$2,013.00	14	0.11
		Misty-Bec Coal Corp.	$489.00	3	0.02
				Total Fractional Years	6.13

Using the formulas provided in the regulations, Claimant worked 6.13 years in the coal mines for the years 1978 through 1995. The fractional year of 0.13 can be converted to days by multiplying by 365, the number of days in the average year. This results in six years and forty-seven days of coal mine employment for the years 1978 through 1995. When this calculation is added to the amount determined above for the years 1970 through 1977, the evidence supports a finding of twelve years, four months coal mine employment for Claimant.

Responsible Operator

On December 10, 2003, the insurer of McDowell Mining, Inc., the West Virginia Coal-Worker's Pneumoconiosis Fund ("WV CWP"), denied that McDowell Mining is the responsible operator for this claim on Form CM-2970a "Operator Response to Notice of Claim." *Dx*. 17. However, in a letter to the District Director dated November 24, 2004, Counsel for the WV CWP, agreed with the District Director's finding in the November 18, 2004, *Proposed Decision and Order – Denial of Benefits* that McDowell Mining is the responsible operator. *Dx*. 20. In the facts and issues listed on Form CM-1025, the fact that McDowell Mining is the responsible operator was not contested by the Employer, but the Employer did contest whether Claimant's most recent period of cumulative employment of not less than one year was with McDowell Mining under "Other Issues." *Dx*. 23. In consideration of the above, the issue of whether McDowell Mining is the responsible operator will be considered contested, thereby requiring a determination.

Claimant's Social Security earnings record shows that he worked for McDowell Mining from 1979 to 1983. *Dx*. 7. He briefly resumed coal mining work in 1995 when he worked for two different companies. *Id*. However, as shown above, Claimant's earnings in 1995 reflect that he worked the equivalent of fourteen days for Double H Coal Company, Inc. and three days for Misty-Bec Coal Corp. *Id*. Furthermore, Claimant testified at the hearing that McDowell Mining was his last employer for whom he worked for at least one year. *Tr*. at 20. Thus, the record supports a finding that McDowell Mining is the employer with which Claimant has the most recent period of cumulative employment of not less than one year. Pursuant to 20 C.F.R. §§ 725.491-725.494 (2001), McDowell Mining is the responsible operator for this claim.

Dependents

During the hearing, some questions arose as to the number of dependents listed on Claimant's application. *Tr*. at 22-24, 28-30. On the application for the second claim, Claimant listed his two step-children under the "unmarried children" question. *Dx*. 2. On the application for the third claim, Claimant noted his disabled, adult daughter and his step-son as "unmarried children." *Dx*. 4. At the hearing, Claimant testified that his adult, disabled daughter is not dependent on him for support. *Tr*. at 19. Claimant's wife testified that while Claimant did not adopt his two step-children, he did financially support them as if they were his own. *Tr*. at 29-30. They are no longer dependent upon Claimant for support. *Tr*. at 20. It is found that Claimant's step-daughter and step-son do satisfy the entitlement condition of the relationship test for a miner's child set forth at 20 C.F.R. § 725.208(c) as he is married to their mother and has been since November 1, 1984. *Dx*. 1. Therefore, the step-daughter and step-son do qualify as augmentees for as long as they were unmarried and either under the age of eighteen or a "student" under the definition provided at 20 C.F.R. § 725.209(b)(1). *See* 20 C.F.R. § 725.209. The District Director shall take further action as appropriate to determine the period of time at which Claimant's step-children ceased meeting the dependency test.

Existence of Pneumoconiosis and Its Etiology

Under the amended regulations, "pneumoconiosis" is defined to include both clinical and legal pneumoconiosis:

> (a) For the purpose of the Act, "pneumoconiosis" means "a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment." This definition includes both medical, or "clinical", pneumoconiosis and statutory, or "legal", pneumoconiosis.
>
> > (1) Clinical Pneumoconiosis. "Clinical pneumoconiosis" consists of those diseases recognized by the medical community as pneumoconioses, i.e., the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment. The definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment.
> >
> > (2) Legal Pneumoconiosis. "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. This definition includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment.
>
> (b) For purposes of this section, a disease "arising out of coal mine employment" includes any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment.

(c) For purposes of this definition, "pneumoconiosis" is recognized as a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure.

20 C.F.R. § 718.201 (2005). Moreover, the regulations at 20 C.F.R. § 718.203(b) (2005) provide that if a miner suffers from pneumoconiosis and has engaged in coal mine employment for ten years or more, as in this case, there is a rebuttable presumption that the pneumoconiosis arose out of such employment.

The existence of pneumoconiosis may be established by any one or more of the following methods: (1) chest x-rays; (2) autopsy or biopsy; (3) by operation of presumption; or (4) by a physician exercising sound medical judgment based on objective medical evidence. 20 C.F.R. § 718.202(a) (2005).[11]

When weighing chest x-ray evidence, the provisions at 20 C.F.R. § 718.202(a)(1) (2005) require that "where two or more X-ray reports are in conflict, in evaluating such X-ray reports consideration shall be given to the radiological qualifications of the physicians interpreting such X-rays."[12] In this vein, the Board has held that it is proper to accord greater weight to the interpretation of a B-reader or Board-certified radiologist over that of a physician without these specialized qualifications. *Roberts v. Bethlehem Mines Corp.*, 8 B.L.R. 1-211 (1985); *Allen v. Riley Hall Coal Co.*, 6 B.L.R. 1-376 (1983). Moreover, an interpretation by a dually-qualified B-reader and Board-certified radiologist may be accorded greater weight than that of a B-reader. *Roberts v. Bethlehem Mines Corp.*, 8 B.L.R. 1-211 (1985); *Sheckler v. Clinchfield Coal Co.*, 7 B.L.R. 1-128 (1984). The following chest roentgenogram evidence is in the record for the merged second and third claims:

Exhibit #	Date of Study / Date of Reading	Physician	Qualifications B-Reader (B) / Board Cert. (BCR)	Film Quality	Reading
Dx. 2	03/07/1997 03/13/01	Wiot	B/BCR	2 "light mottle"	1/1 p
Dx. 2	03/07/1997 03/21/2001	Spitz	B/BCR	2	1/0 p
Dx. 2	08/13/1999 08/30/1999	Forehand	B	1	Negative for pneumoconiosis; "apical pleural thickening R>L"
Dx. 2	08/13/1999 09/28/1999	Ranavaya	--	1	1/0 p/q

[11] There is no autopsy or biopsy evidence in this record and the presumptions contained at §§ 718.304 - 718.306 are inapplicable such that these methods of demonstrating pneumoconiosis will not be discussed further.

[12] A"B-reader" (B) is a physician, but not necessarily a radiologist, who successfully completed an examination in interpreting x-ray studies conducted by, or on behalf of, the Appalachian Laboratory for Occupational Safety and Health (ALOSH). A designation of "Board-certified" (BCR) denotes a physician who has been certified in radiology or diagnostic roentgenology by the American Board of Radiology or the American Osteopathic Association.

Dx. 2	08/13/1999 11/14/1999	Barrett	B/BCR	1	1/1
Dx. 2	08/13/1999 03/13/2001	Wiot	B/BCR	2 "mottle"	1/1 p
Dx. 2	08/13/1999 03/21/2001	Spitz	B/BCR	1	1/0 p
Dx. 12	03/02/2004[13] 03/04/2004	Patel	B/BCR	2	1/0 s/t em, hi
Dx. 13	03/02/2004 07/19/2004	Binns	B/BCR	2 "dark"	1/1 p, s
Dx. 14	08/11/2004 08/12/2004	Castle	B	1	1/1 q, t
Cx. 1	04/05/2005 04/06/2005	Rasmussen	B	1	1/1 s, t ih
Ex. 1	02/28/2006 02/28/2006	Hippensteel	B	3 "improper position"	0/1 s, q pi
Cx. 2	02/28/2006 05/28/2006	DePonte	B/BCR	2	2/2 ax

Based on the foregoing, Claimant has established that he suffers from pneumoconiosis. Of the thirteen chest X-rays in the record for the merged second and third claims, all but two are positive for pneumoconiosis. The August 13, 1999, negative reading by Dr. Forehand, a B-reader, was found to be positive by three dually-qualified physicians. The non-qualifying 0/1 reading by Dr. Hippensteel, a B-reader, of the February 28, 2006, X-ray is outweighed by the positive interpretation with a profusion of 2/2 by Dr. Deponte, a dually-qualified reader. Furthermore, the readings associated with the most recent claim are the most probative given the lapse of seven to nine years between the X-ray interpretations submitted with the first claim and the instant claim. *See Adkins v. Director, OWCP*, 958 F.2d 49 (4th Cir. 1992) (according greater weight to the most recent evidence that demonstrates a deterioration in the miner's condition is proper because pneumoconiosis is progressive and irreversible); *Clark v. Karst-Robbins Coal Co.*, 12 B.L.R. 1-149 (1989 (en banc). Thus, Claimant has established the presence of pneumoconiosis by a preponderance of the X-ray evidence. 20 C.F.R. § 718.202(a)(1) (2005).

Claimant also may establish that he suffers from the disease by well-reasoned, well-documented medical reports. A "documented" opinion is one that sets forth the clinical findings, observations, facts and other data on which the physician based the diagnosis. *Fields v. Island Creek Coal Co.*, 10 B.L.R. 1-19 (1987). An opinion may be considered to be adequately documented if it is based on items such as a physical examination, symptoms, and the patient's history. *See Hoffman v. B&G Construction Co.*, 8 B.L.R. 1-65 (1985); *Hess v. Clinchfield Coal Co.*, 7 B.L.R. 1-295 (1984).

A "reasoned" opinion is one in which the administrative law judge finds the underlying documentation adequate to support the physician's conclusions. *Fields, supra*. Indeed, whether

[13] The March 2, 2004, X-ray was reread for quality by Dr. Peter Barrett on April 9, 2004. According to Dr. Barrett, the film quality was "1." *Dx*. 12.

a medical report is sufficiently documented and reasoned is for the administrative law judge as the finder-of-fact to decide. *Clark v. Karst-Robbins Coal Co.*, 12 B.L.R. 1-149 (1989) (en banc). Moreover, statutory pneumoconiosis is established by well-reasoned medical reports which support a finding that the miner's pulmonary or respiratory condition is significantly related to or substantially aggravated by coal dust exposure. *Wilburn v. Director, OWCP*, 11 B.L.R. 1-135 (1988). The following medical reports were admitted as evidence in the record:

1. Dr. C.P. Vasudevan[14] examined and tested Claimant and issued a report on September 16, 1999. *Dx*. 2. He noted fifteen years of coal mine employment along with a history of smoking one and a half packs of cigarettes per day for thirty years. According to the report, Claimant ceased smoking in January of 1999. Claimant listed a history of frequent colds and attacks of wheezing. He was diagnosed with pneumoconiosis in 1987. Claimant complained of daily wheezing for ten years, dyspnea for ten years when walking on level ground, and coughing during the prior ten years. The cardiac and pulmonary examinations disclosed no abnormalities. An X-ray ordered by Dr. Vasudevan was read by Dr. Forehand as negative for pneumoconiosis. Dr. Vasudevan summarized the pulmonary function study as showing mild airflow limitation. Arterial blood gas studies revealed mild hypoxemia.

Dr. Vasudevan diagnosed Claimant with mild chronic obstructive pulmonary disease ("COPD"), the etiology of which was smoking. Dr. Vasudevan found that Claimant had no respiratory or pulmonary impairment.

2. Dr. Donald L. Rasmussen[15] examined and tested Claimant and issued a report on March 18, 2004. *Dx*. 12. Dr. Rasmussen noted "at least fourteen years" of coal mine employment. Claimant reported smoking since 1967. While he used to smoke one pack per day, Claimant stated that he "smokes only an occasional cigarette." Claimant stated that he had a history of tachycardia. In addition, Claimant suffered pneumonia sometime in the 1990's. He complained of tenacious phlegm, constant wheezing that worsens with exertion, and dyspnea for over twelve years. Claimant's symptoms include coughing, hemoptysis in the past with paroxysms, and occasional substernal and posterior lateral chest pains. Examination of the lungs revealed moderately-markedly reduced breath sounds with transient rhonchi heard in the right lower lobe. No rales or wheezes were detected. The cardiac examination revealed no abnormalities.

Claimant underwent testing during his examination by Dr. Rasmussen. An X-ray ordered by Dr. Rasmussen was read by Dr. Patel as indicating pneumoconiosis s/t with a profusion of 1/0 throughout all lung zones. Dr. Rasmussen also noted Dr. Patel's finding of enlarged hila on the basis of enlarged central pulmonary arteries. Dr. Rasmussen interpreted the pulmonary function study as revealing minimal, partially reversible obstructive ventilatory impairment. Arterial blood gas studies showed moderate impairment in oxygen transfer at rest. According to Dr. Rasmussen, the pulmonary function and blood gas studies "indicate[d] at least moderate loss of lung function as reflected by [Claimant's] ventilatory impairment and his significant reduction in single breath carbon monoxide diffusing capacity."

[14] Dr. Vasudevan's qualifications were not included in the record.
[15] Dr. Rasmussen is Board-certified in internal and forensic medicine as well as being a NIOSH B-Reader. *Dx*. 12.

Dr. Rasmussen diagnosed Claimant with occupational pneumoconiosis. He based the diagnosis of pneumoconiosis on Claimant's "significant history of exposure to coal mine dust as well as other occupational dusts" and the X-ray evidence showing changes consistent with pneumoconiosis. Dr. Rasmussen also diagnosed Claimant with COPD and emphysema. These diagnoses were based upon Claimant's chronic productive cough, airflow obstruction, and reduced single breath carbon monoxide diffusing capacity. The etiology of the pneumoconiosis was listed as coal mine dust exposure and other dust exposures while the etiology of the COPD and emphysema was listed as both exposure to coal mine dust and cigarette smoking. He opined that Claimant does not have the pulmonary capacity to perform his last regular coal mine job. Dr. Rasmussen attributed Claimant's pulmonary impairment to both cigarette smoking and occupational dust exposure, including coal dust exposure. Dr. Rasmussen contended that Claimant's coal dust exposure "contributed significantly" to his disabling lung disease.

3. Dr. James R. Castle[16] tested and examined Claimant and wrote a report of his findings on September 16, 2004. *Dx*. 14. He noted sixteen years coal mine employment and a history of smoking since the age of eighteen. Claimant reported smoking one half to one pack per day, but stated that he cut down from up to one and a half packs each day. Dr. Castle calculated a thirty-pack year smoking history. Claimant recounted a history of shortness of breath for over five years, a productive cough, and wheezing. He also reported chest pain, both exertional and nonexertional, and a rapid heartbeat. Examination of the heart revealed no abnormalities. The pulmonary examination revealed rhonchi that cleared with deep breathing. Dr. Castle interpreted the chest X-ray as showing q/t type opacities in all lung zones with a profusion of 1/1. Pulmonary function testing revealed moderate obstruction with significant improvement after administrative of bronchodilators. The test also showed gas trapping and a reduction in the diffusing capacity. Dr. Castle opined that the blood gas study disclosed mild hypoxemia caused by ventilation/profusion mismatching related to Claimant's cigarette smoke-induced lung disease.

Dr. Castle diagnosed Claimant with simple coal workers' pneumoconiosis and tobacco smoke-induced pulmonary emphysema with an asthmatic component. The diagnosis of pneumoconiosis was based upon Claimant's coal mine employment history and the X-ray conducted at the time of the exam. The diagnosis of tobacco smoke-induced pulmonary emphysema with an asthmatic component was founded upon Claimant's smoking history and the pulmonary function and arterial blood gas studies. According to Dr. Castle, the pulmonary function study revealed a reduction in the diffusing capacity which is indicative of tobacco smoke-induced pulmonary emphysema and not coal workers' pneumoconiosis. In addition, Dr. Castle found the blood gas study results to be suggestive of the tobacco smoke-induced lung disease. He contended that Claimant has a disabling pulmonary impairment caused by the cigarette smoke-induced emphysema with an asthmatic component.

Dr. Castle was deposed on April 7, 2006. *Ex*. 3. His testimony corroborated his medical report as discussed above. Dr. Castle confirmed that he diagnosed Claimant with coal workers' pneumoconiosis based upon Claimant's coal mine employment history and the positive X-ray.

[16] Dr. Castle is Board-certified in internal medicine and pulmonary diseases and is a NIOSH B-Reader. *Dx*. 14.

He stated that Claimant's pneumoconiosis was caused by his work in the coal mines. Dr. Castle provided an explanation of carboxyhemoglobin levels as "a measure of the amount of hemoglobin that is associated or that has carbon monoxide bound to that." In his opinion, Claimant's carboxyhemoglobin level of 5.9 percent "means that [he] had been intimately exposed to the products of combustion, usually cigarette smoke . . . and that level is consistent with someone who smokes about a pack of cigarettes daily." Dr. Castle explained that Claimant's moderate obstruction with significant reversibility, gas trapping, and diffusing capacity reduction, as revealed by the pulmonary function study, is related to tobacco smoke-induced airway obstruction with some asthmatic component rather than to coal dust induced disease. According to Dr. Castle,

> Coal dust induced lung disease causes a mixed irreversible obstructive and restrictive ventilatory impairment. Furthermore, it does not typically result in a reduction in the diffusing capacity unless you have a very high degree of profusion, generally category three or stage three of p or r type opacities, and none of those findings were present in this case. [Claimant] did not have any restriction. The obstruction that was present was reversible, and he had a reduction in diffusing capacity.

Dr. Castle stated that his review of the other pulmonary function and blood gas studies in the record did not alter his assessment of Claimant's pulmonary function. He affirmed his finding that Claimant has a disabling respiratory impairment which was based upon the results from the pulmonary function studies. In addition, he agreed that Claimant's degree of impairment would prevent an individual from performing heavy manual labor. According to Dr. Castle, Claimant's totally disabling respiratory impairment is not caused by, related to, or aggravated by medical or legal pneumoconiosis or coal dust exposure. He based this opinion "on the physiologic findings in this case as well as all the other data" that he reviewed. He stated that "[t]he physiologic changes that are present are those of tobacco smoke-induced airway disease as opposed to the changes that we see in coal mine dust induced lung disease."

4. Dr. Donald L. Rasmussen reexamined and retested Claimant and issued a second report on April 5, 2005. *Cx*. 1. He recorded sixteen years of coal mine employment, all in small mines and involving heavy to very heavy manual labor. According to Dr. Rasmussen's report, Claimant began smoking cigarettes in 1967, and smoked an average of one to one and a half packs per day. Claimant stated that he had not smoked for two weeks before the medical examination. He first experienced shortness of breath upon exertion ten to twelve years ago that has progressively worsened. Claimant suffered from pneumonia in the 1990's. Claimant complained of a chronic productive cough, constant wheezing, and troubled sleeping. He experiences occasional substernal discomfort and recalled two episodes of severe pain for which he sought emergency room treatment. No abnormalities were found on these occasions, other than a rapid heart rate.

The cardiac examination revealed reduced heart tones. Dr. Rasmussen noted a mild pectus excavatum. Examination of the lungs disclosed minimally to moderately reduced breath sounds with a few bilateral crackles greater on the left side. Claimant exhibited normal chest expansion. Dr. Rasmussen interpreted the chest X-ray as indicating pneumoconiosis with s and t opacities at a profusion of 1/1 throughout all lung zones along with bilateral hilar enlargement,

questionable adenopathy or most likely venous enlargement. The electrocardiogram was within normal limits. Pulmonary function studies revealed moderate, partially reversible obstructive ventilatory impairment. Blood gas testing disclosed minimal resting hypoxemia. Claimant's single breath carbon monoxide diffusing capacity was moderately reduced.

Dr. Rasmussen summarized the testing as showing "at least moderate loss of lung function as reflected by [Claimant's] ventilatory impairment and his reduced single breath carbon monoxide diffusing capacity." According to Dr. Rasmussen, impairment of this degree would preclude performing heavy manual labor. Dr. Rasmussen contended, "[Claimant] does not retain the pulmonary capacity to perform his last regular coal mine job." Dr. Rasmussen stated that two or three factors are responsible for Claimant's lung function impairment, namely his cigarette smoking, his coal mine dust exposure, and possibly atopy or hyperactive airways disease. He opined, "Both cigarette smoking and coal mine dust exposure are known to cause chronic obstructive lung disease including chronic bronchitis and emphysema and small airways disease." He further stated that the effects of cigarette smoking and exposure to dust are independent, but additive. Dr. Rasmussen found that Claimant showed evidence of and has a history consistent with hyperactive airways disease. According to Dr. Rasmussen, individuals with hyperactive airways disease are more susceptible to the effects of occupational dust exposure. Dr. Rasmussen diagnosed Claimant with medical coal workers' pneumoconiosis based upon the X-ray and with legal pneumoconiosis. Dr. Rasmussen contended that the pneumoconiosis "contributes significantly to [Claimant's] disabling chronic lung disease."

5. Dr. Kirk E. Hippensteel[17] performed a physical examination and testing of Claimant, took an occupational and medical history, and issued a report on March 17, 2006. *Ex*. 1. He noted sixteen years of coal mine employment along with a history of smoking since the age of eighteen an average of one pack per day. Claimant stated that he was trying to quit smoking, and had quit in the past for a total of five years. He reported no history of pneumonia, but stated that he has suffered about two upper respiratory infections in the last year. Claimant related a history of breathing problems for several years. He loses his breath after walking twenty-five to thirty minutes. Claimant also reported anterior chest pain with coughing, but usually not with walking. Examination of the lungs disclosed minimal rhonchi bilaterally while the cardiac examination uncovered no abnormalities.

Dr. Hippensteel interpreted the X-ray as showing "a minimal increase in lung markings consistent with [Claimant's] history of chronic bronchitis and does not show evidence of coal workers' pneumoconiosis." He found s and q opacities at a profusion of 0/1 and noted a right horizontal fissure. According to Dr. Hippensteel, the pulmonary function study disclosed severe airflow obstruction with some worsening post-bronchodilator, but no restriction was found. Claimant's lung volume showed some air trapping. The arterial blood gas study disclosed mild hypoxemia at rest. Dr. Hippensteel noted a reduced barometric pressure of 722. He opined that Claimant's carboxyhemoglobin was significantly elevated to 4.9%, a level "consistent with current smoking of one pack of cigarettes per day." The electrocardiogram produced normal results.

[17] Dr. Hippensteel is Board-certified in internal medicine and pulmonary diseases. In addition, he is a NIOSH-certified B Reader. *Ex*. 1.

Dr. Hippensteel diagnosed Claimant with chronic bronchitis. In Dr. Hippensteel's opinion, the examination, testing, and records do not support a finding of coal workers' pneumoconiosis. He attributes Claimant's chronic bronchitis with his continued heavy exposure to cigarette smoke, stating that a finding of industrial bronchitis would be incompatible with the length of time Claimant has been away from mining work. Dr. Hippensteel contended that Claimant's airflow obstruction "is negatively affected by his requirement of beta blocker therapy to slow his heart." He also stated that Claimant's mild hypoxemia most likely is due to ventilation profusion mismatching with his cigarette smoking and chronic bronchitis. Dr. Hippensteel opined that the mild hypoxemia would improve if Claimant were able to exercise. He stated that Claimant "is unable to go back to work at his job at the mines because of his obstructive respiratory impairment at this time." Finally, Dr. Hippensteel maintained,

> The evidence altogether in this case shows with a reasonable degree of medical certainty that [Claimant's] pulmonary impairment is secondary to his long and continued cigarette smoking, which has been complicated by chronic bronchitis with associated ventilation perfusion mismatching and obstructive airflow impairment.

Dr. Hippensteel was subsequently deposed on April 3, 2006. *Ex*. 2. His testimony corroborated his medical report as discussed above. Dr. Hippensteel provided further information on the carboxyhemoglobin level test, stating that it is used to determine the level of carbon monoxide in the blood "which can be correlated with current smoking." He posited that Claimant's carbon monoxide level was consistent with his reported smoking history. Dr. Hippensteel also maintained that Claimant's use of a beta blocker could interfere with air flow in the lungs. According to Dr. Hippensteel, the rhonchi heard during the examination of the lungs are caused by active airway inflammation due to Claimant's history of chronic bronchitis and continued smoking. He opined that the X-rays and corresponding interpretations in the record "suggest the possibility that [Claimant] does have simple pneumoconiosis. He agreed that Claimant's pulmonary impairment is sufficient to be disabling from a respiratory standpoint. However, he found that the pulmonary function studies in the record do not indicate that coal workers' pneumoconiosis is the cause of Claimant's pulmonary impairment. Dr. Hippensteel repeated his contention that Claimant's pulmonary impairment is caused by continued cigarette smoking with a possible asthmatic component.

Based on the foregoing medical reports, Claimant has established that he has coal workers' pneumoconiosis. All four doctors agree that Claimant has a pulmonary impairment. Of the five medical reports in the record, three provide a diagnosis of pneumoconiosis. Dr. Vasudevan diagnosed Claimant with mild COPD. However, his diagnosis was based on a negative X-ray interpretation by a B-reader that was reread by three physicians, including two who are dually-qualified, as positive for pneumoconiosis. In addition, Dr. Vasudevan's report may be accorded less weight because it was compiled more than four years before the filing of this most recent claim. Dr. Hippensteel diagnosed Claimant with chronic bronchitis, noting that the X-ray did not reveal evidence of coal workers' pneumoconiosis. This X-ray was interpreted by a more qualified reader as Category 2 pneumoconiosis. Therefore, Dr. Hippensteel's opinion is less persuasive as it is not supported by the X-ray upon which he relied. In addition, Dr.

Hippensteel conceded that the other X-rays and interpretations in the record suggest the possibility of simple pneumoconiosis.

Drs. Rasmussen and Castle both diagnosed Claimant with pneumoconiosis. Dr. Rasmussen found evidence of medical pneumoconiosis in the positive X-rays as well as legal pneumoconiosis. His finding of legal pneumoconiosis is reasonably supported by the pulmonary examination revealing minimally to moderately reduced breath sounds and bilateral crackles and Claimant's moderate loss of lung function, reduced single breath carbon monoxide diffusing capacity, and minimal resting hypoxemia. Dr. Castle based his diagnosis on a positive X-ray and on Claimant's coal mine employment. Both Dr. Rasmussen and Dr. Castle's diagnoses are accorded greater weight as they are consistent with the preponderance of the X-ray evidence and supported by the objective medical evidence in the record. *Minnich v. Pagnotti Enterprises, Inc*., 9 B.L.R. 1-89, 1-90 n. 1 (1986) (finding it proper to accord greater weight to an opinion that is better supported by the objective medical data of record).

Weighing all of the evidence in the record together, Claimant has established that he suffers from legal coal workers' pneumoconiosis under 20 C.F.R. § 718.202(a) of the regulations. *Island Creek Coal Co. v. Compton*, 211 F.3d 203 (4th Cir. 2000). The preponderance of the X-ray evidence in the record supports a finding of pneumoconiosis. These positive X-rays readings form the basis for Drs. Rasmussen and Castle's documented and well-reasoned diagnoses of pneumoconiosis.

Next, Claimant must establish that his pneumoconiosis arose, at least in part, out of coal mine employment. *See* 20 C.F.R. § 718.203. A miner who establishes ten or more years of coal mine employment is entitled to a rebuttable presumption that his pneumoconiosis arose out of that employment. 20 C.F.R. § 718.203(b). In the present case, Claimant has established twelve years and four months of work in the coal mines, entitling him to the rebuttable presumption. Employer has failed to offer evidence or argument sufficient to rebut the presumption. Both Drs. Castle and Rasmussen attribute Claimant's pneumoconiosis to his coal mine employment. Since Dr. Vasudevan and Dr. Hippensteel did not diagnose Claimant with pneumoconiosis, their opinions as to the disease's cause are not relevant. It is determined that Claimant's pneumoconiosis arose out of his coal mine employment.

Total Disability Due to Pneumoconiosis

Benefits are provided under the Act for, or on behalf of, miners who are totally disabled due to pneumoconiosis. 20 C.F.R. § 718.204(a) (2005). The regulations further state the following:

> For purposes of this section, any nonpulmonary or nonrespiratory condition or disease, which causes an independent disability unrelated to the miner's pulmonary or respiratory disability, shall not be considered in determining whether a miner is totally disabled due to pneumoconiosis. If, however, a nonpulmonary or nonrespiratory condition or disease causes a chronic respiratory or pulmonary impairment, that condition or disease shall be considered in determining whether the miner is or was totally disabled due to pneumoconiosis.

20 C.F.R. § 718.204(a).

Moreover, pneumoconiosis must be a "contributing cause" to the miner's disability.[18] *Hobbs v. Clinchfield Coal Co*., 917 F.2d 790, 792 (4th Cir. 1990); *Robinson v. Pickands Mather & Co*., 914 F.2d 35, 38 (4th Cir. 1990).

Twenty C.F.R. § 718.204(b) provides the following five methods to establish total disability: (1) qualifying pulmonary function studies; (2) qualifying blood gas studies; (3) evidence of cor pulmonale with right-sided congestive heart failure;[19] (4) reasoned medical opinions; and (5) lay testimony.[20]

Total disability may be established through a preponderance of qualifying pulmonary function studies. The quality standards for pulmonary function studies are located at 20 C.F.R. § 718.103 (2005) and require, in relevant part, that (1) each study be accompanied by three tracings, *Estes v. Director, OWCP*, 7 B.L.R. 1-414 (1984), (2) the reported FEV1 and FVC or MVV values constitute the best efforts of three trials, and, (3) for testing conducted after January 19, 2001, a flow-volume loop must be provided. The administrative law judge may accord lesser weight to those studies where the miner exhibited "poor" cooperation or comprehension. *Houchin v. Old Ben Coal Co.*, 6 B.L.R. 1-1141 (1984); *Runco v. Director, OWCP*, 6 B.L.R. 1-945 (1984). To be qualifying, the regulations provide that the FEV1 be qualifying *and* either (1) the MVV or FVC values must be equal to or fall below those values listed at Appendix B for a miner of similar gender, age, and height, or (2) the result of the FEV1 divided by the FVC is equal to or less than 55 percent. The following pulmonary function studies are in the record:

Exhibit / Date of Test / Physician	Age / Height (in.)	Coop./ Comp. Noted	Tracings / Flow Vol. Loop	Broncho-dilator (pre/post)	FEV1	FVC	MVV	FEV1/ FCV Ratio	Qualifies?[21]

[18] Because Claimant's second pending claim was filed on July 13, 1999, the pre-amended regulations standard for the etiology of a miner's total disability, as established in the circuit courts, is applicable in this case. *National Mining Ass'n v. Dep't of Labor*, 292 F.3d 849 (D.C. Cir. 2002).

[19] There is no evidence of cor pulmonale with right-sided congestive heart failure such that this method of establishing total disability will not be discussed further.

[20] The Board holds that a judge cannot rely solely upon lay evidence to find total disability in a living miner's claim. *Tedesco v. Director, OWCP*, 18 B.L.R. 1-103 (1994).

[21] There is a discrepancy in Claimant's recorded heights. Conflicting heights of a miner recorded on pulmonary function must be resolved. *Protopappas v. Director, OWCP*, 6 B.L.R. 1-221 (1983); *Toler v. Eastern Assoc. Coal Co*., 43 F.3d 109 (4th Cir. 1995) (the fact-finder erred in failing to resolve height discrepancies in the record particularly where the discrepancies affected whether the tests were qualifying). The discrepancy may be resolved by averaging the heights listed in the pulmonary function studies in the record. Qualification of the pulmonary function studies in this claim is based on a height of 72.4 inches, the average of Claimant's reported heights.

Dx. 2 07/06/1999 Craven[22]	47 73”	Good Good	Yes/ No	Pre	2.36	3.76	59.5	62.76%	Yes
				Post	--	--	--	--	--
Dx. 2 08/13/1999 Vasudevan	47 73”	Good[23] / Not noted	Yes / Yes	Pre	3.29	4.56[24]	102[25]	75%	No
				Post	3.38	4.87	105[14]	69%	No
Dx. 2 07/21/2000 Craven[26]	48 73”	Good / Good	Yes/ No	Pre	2.48	3.84	93	64.58%	No
				Post	--	--	--	--	--
Dx. 12 03/02/2004 Rasmussen	52 72”	Good / Good	Yes/ Yes	Pre	2.56	4.64	--	55%	No
				Post	2.82	4.89	--	58%	No
Dx. 14 08/11/2004 Castle	52 72”	Not noted / Not noted	Yes/ Yes	Pre	2.19	3.90	51	56%	Yes
				Post	2.45	4.13	--	59%	No
Cx. 1 04/05/2005 Rasmussen	53 72”	Not noted / Not noted	Yes/ Yes	Pre	2.19	4.89	--	45%	Yes
				Post	2.48	4.89	--	51%	No
Ex. 1 02/28/2006 Hippensteel	54 72.3”	Good / Not noted	Yes/ No	Pre	1.95	3.51	--	55.4%	No[27]
				Post	1.76	3.19	--	55.2%	No

Based upon the foregoing, Claimant has not established total disability pursuant to 20 C.F.R. § 718.204(b)(2)(i) of the regulations. As the preceding table demonstrates, there are twelve pulmonary function test results that must be considered. *See Strako v. Ziegler Coal Co*., 3 B.L.R. 1-136 (1981) (all ventilatory studies of record, both pre-bronchodilator and post-

[22] The July 6, 1999, pulmonary function study was reviewed by Dr. Michos on December 7, 2000. Dr. Michos found the study unacceptable due to less than optimal effort. Dr. Michos wrote, “Suboptimal MVV performance. Significant variation between the 2 PFT’s dated 07/06/99 and 08/13/99 is noted. Suspect full inspiratory and expiratory effort is not obtained. Recommend repeat PFT’s with flow volume loops to better gauge effort.” *Dx*. 2.

[23] A notation included in the test results stated, “many tries to get within 5%. Patient had difficulty succeeding in this range. Cooperation good.”

[24] The report listed 4.41 as the “best” of three tries listed for the FVC value pre-bronchodilator. However, the results show that the highest, or best, value of the pre-bronchodilator trials was actually 4.56. *Dx*. 2.

[25] A footnote to the 102 and 105 MVV value indicates, “outside of 95% confidence interval.” *Dx*. 2.

[26] The July 21, 2000, pulmonary function study was reviewed by Dr. Michos on December 7, 2000. *Dx*. 2. Dr. Michos found the study unacceptable because the tracings are not legible. Dr. Michos indicated, “Unable to hand calculate FVC, FEV1 values from tracings provided. Please provide computerized values of all trials for validation.”

[27] It is noted that Claimant’s ratio of FEV1 to FVC for both before and after administration of the bronchodilator just misses the regulations qualifying percentage of “55 or less.” *See* 20 C.F.R. § 718.204(b)(2)(i)(C).

bronchodilator, must be weighed). Of the twelve pulmonary function studies in the record, only three produced qualifying results. The July 6, 1999, pulmonary function study was reviewed by Dr. Michos on December 7, 2000. Dr. Michos found the study unacceptable due to less than optimal effort. Therefore, this study cannot be considered because it does not conform to the quality standards of 20 C.F.R. § 718.104.[28] With nine of the twelve studies failing to meet the qualifying values, Claimant has not established disability through a preponderance of the pulmonary function tests. If only the studies associated with Claimant's most recent claim are considered, Claimant still has not met his burden as only two of the eight most recent studies produced qualifying results.

Total disability may also be established by qualifying blood gas studies under 20 C.F.R. § 718.204(b)(2)(ii). In order to be qualifying, the PO2 values corresponding to the PCO2 values must be equal to or less than those found at the table at Appendix C. The following blood gas studies are in the record:

Exhibit / Date of Test /	Physician	Altitude (feet)	Resting (R) Exercise (E)[29]	PCO2	PO2	Qualifies?
Dx. 2 08/13/1999	Vasudevan	0 to 2,999 ft.	R	36.9	71.0	No
Dx. 12 03/02/2004[30]	Rasmussen	0 to 2,999 ft.	R	37	60	Yes
Dx. 14 08/11/2004	Castle	0 to 2,999 ft.[31]	R	40.1	60.4	No[32]

[28] Notwithstanding the July 6, 1999, study's failure to conform to the qualify standard, it still would be accorded little weight due to the progressive nature of pneumoconiosis as the study was conducted over four years prior to the studies associated with Claimant's third claim.

[29] Claimant cannot perform the exercise portion of the blood gas studies due to his back injury. *Dx*. 2, 12, 14; *Cx*. 1; *Ex*. 1.

[30] The March 2, 2004, blood gas study was validated by Dr. Michos on May 21, 2004. *Dx*. 12.

[31] The August 11, 2004, blood gas study does not indicate the altitude. The test was conducted in Richlands, VA. *Dx*. 14.

[32] The 60.4 PO2 result is only 0.4mm Hg over the qualifying value of 60. In his April 7, 2006, deposition, Dr. Castle stated that this blood gas study produced a qualifying result as it is "exactly on the line." Dx. 14. The regulations require the PO2 result to be equal to or less than the qualifying value. The blood gas tables at Appendix C do not allow rounding up or down to determine whether a test produces qualifying results. *Tucker v. Director, OWCP*, 10 B.L.R. 1-35 (1987). Claimant's 60.4 PO2 exceeds the 60 qualifying value.

Cx. 1 04/05/2005	Rasmussen	0 to 2,999 ft.[33]	R	35	67	No
Ex. 1 02/28/2006	Hippensteel	0 to 2,999 ft.[34]	R	36	64	Yes

Based upon the foregoing, Claimant has not demonstrated total disability pursuant to 20 C.F.R. § 718.204(b)(2)(ii) of the regulations. Only two of the five blood gas studies in the record produced qualifying values. Even if the 1999 test is taken out of consideration, the most recent results are in equipoise with two qualifying and two failing to qualify.

The final method by which Claimant may establish total disability is through medical opinion evidence wherein a physician has exercised reasoned medical judgment based on medically acceptable clinical and laboratory diagnostic techniques to conclude that the miner's respiratory or pulmonary condition prevents him from engaging in his usual coal mine employment or comparable employment. 20 C.F.R. § 718.204(b)(2)(iv).

Initially, Claimant has the burden of establishing the exertional requirements of his usual coal mine employment. *Onderko v. Director, OWCP*, 14 B.L.R. 1-2 (1989). Once a claimant establishes that he is unable to perform his usual coal mine employment, a *prima facie* case for total disability exists, and the burden shifts to the party opposing entitlement to prove that the claimant is able to perform comparable and gainful work. *Taylor v. Evans and Grambrel Co.*, 12 B.L.R. 1-83, 1-87 (1988).

Claimant appeared credible and testified at the hearing that he last worked as a roof bolter. *Tr*. at 13-16. According to Claimant, eighty-five to ninety percent of his time working in the mines was as a roof bolter. *Tr*. at 13. He described his roof bolter job duties as including drilling into various types of rock and carrying, bending, and setting roof bolts. *Tr*. at 13-16. At times, Claimant had to carry bundles of ten steel roof bolts up to eight feet long each. *Tr*. at 14. Based on this record, it is determined that Claimant performed heavy work. Comparing the exertional requirements of his last coal mining job with the physical limitations demonstrated on this record, it is determined that Claimant has established that he is totally disabled under 20 C.F.R. § 718.204(b)(2)(iv) through a preponderance of the medical opinion evidence of record.

Of the medical opinions in the record, all the physicians but Dr. Vasudevan agree that Claimant is totally disabled from a pulmonary impairment. Dr. Vasudevan's opinion is the oldest in the record, written and based on an examination in 1999. Consequently, it is accorded less weight as it is not determinative of Claimant's current condition.

[33] The April 5, 2005, blood gas study does not indicate the altitude. The study was conducted in Beckley, WV. *Cx*. 1.

[34] The February 28, 2006, blood gas study does not indicate the altitude. The study was conducted in Roanoke, VA. *Ex*. 1.

In his initial report, Dr. Rasmussen stated that Claimant does not retain the pulmonary capacity to perform his last regular coal mining job. *Dx*. 12. He stated, "[Claimant] has at least moderate loss of lung function as reflected by his ventilatory impairment and especially his reduced SBDLCO [single breath diffusing capacity for carbon monoxide]." Dr. Rasmussen based his finding of total disability on the pulmonary function study revealing a minimal obstructive ventilatory impairment and the moderate impairment in oxygen transfer at rest disclosed by the blood gas study. His initial pulmonary examination of Claimant revealed moderately-markedly reduced breath sounds and transient rhonchi heard in the right lower lobe. In his second report, Dr. Rasmussen found that Claimant has "at least moderate loss of lung function" based upon the pulmonary function and blood gas studies. In addition, Dr. Rasmussen heard bilateral crackles upon second examination of the lungs. Dr. Castle also found that Claimant suffers from a disabling pulmonary impairment based upon the results from the pulmonary function studies. The pulmonary function study performed by Dr. Castle disclosed moderate obstruction with significant improvement after administration of the bronchodilator as well as gas trapping and a reduction in the diffusing capacity He agreed that an individual with Claimant's level of impairment would not be able to perform heavy manual labor. Finally, Dr. Hippensteel concluded that Claimant is totally disabled based upon the results from the pulmonary function test showing severe airflow obstruction and some air trapping and the blood gas study, which disclosed mild hypoxemia. He stated that Claimant is not able to perform his usual coal mining work due to his disabling obstructive respiratory impairment. Drs. Rasmussen, Castle, and Hippensteel all found Claimant to be totally disabled from a pulmonary impairment. Accordingly, their opinions support a finding that Claimant is totally disabled from performing his last coal mining job which required heavy manual labor.

Claimant has established that he is totally disabled through the reasoned medical opinion evidence in the record. The contrary probative evidence of record, namely the non-qualifying pulmonary function and arterial blood gas studies, is insufficient to outweigh this finding.

To be entitled to benefits, Claimant still must establish that his total pulmonary disability is caused by the pneumoconiosis. 20 C.F.R. § 718.204 (1998). [35] In the Fourth Circuit where this case arises, causation of total disability by pneumoconiosis is established if the miner can show that the pneumoconiosis is a "contributing cause." *Hobbs v. Clinchfield Coal Co*., 917 F.2d 790, 792 (4th Cir. 1990); *Robinson v. Pickands Mather & Co*., 914 F.2d 35, 38 (4th Cir. 1990). The Board has held that the miner bears the burden to establish total disability due to pneumoconiosis by a preponderance of the evidence. *Baumgartner v. Director, OWCP*, 9 B.L.R. 1-65, 1-66 (1986); *Gee v. Moore & Sons*, 9 B.L.R. 1-4, 1-6 (1986) (en banc).

In the instant case, Claimant has established the existence of coal workers' pneumoconiosis and total disability. At the outset, the opinions of Dr. Vasudevan and Dr. Hippensteel as to the etiology of Claimant's total disability cannot be accorded any weight because their findings of no pneumoconiosis are contrary to the above findings. In *Toler v. Eastern Associated Coal Co*., the Fourth Circuit found it "difficult to understand" how an administrative law judge who finds that a miner has established pneumoconiosis could also find

[35] As discussed *supra*, the pre-amended regulations standard for the etiology of a miner's total disability, as established in the circuit courts, is applicable in this case because Claimant's second pending claim was filed on July 13, 1999. *National Mining Ass'n v. Dep't of Labor*, 292 F.3d 849 (D.C. Cir. 2002).

that his total disability was not due to pneumoconiosis based upon the medical opinions of doctors who concluded that the miner did not have pneumoconiosis. 43 F.3d 109 (4th Cir. 1995). Furthermore, in *Scott v. Mason Coal Company*, the Fourth Circuit held that where the administrative law judge determines that a miner suffers from pneumoconiosis, he/she may not accord weight to a physician's opinion with regard to the cause of the miner's totally disabling respiratory impairment if that physician did not diagnose the presence of pneumoconiosis. 289 F.3d 263 (4th Cir. 2002); *see also*, *Tapley v. Bethenergy Mines, Inc*., BRB No. 04-0790 (May 26, 2005) (unpub.) (holding it proper to discredit medical opinions of physicians with regard to disability where the physicians concluded that the miner did not suffer from either legal or clinical pneumoconiosis contrary to the ALJ's findings). To do so would be to rely upon an opinion that, taken as a whole, contradicts the administrative law judge's finding. Based upon the above finding that Claimant has established the existence of coal worker's pneumoconiosis, it is proper to discredit the opinions of Drs. Vasudevan and Hippensteel as to the causation of Claimant's total disability.

In addition, Dr. Hippensteel's opinion on causation is accorded little weight because it is not well-reasoned. He stated that the pulmonary function tests "are not typical or suggestive of coal worker's pneumoconiosis as a cause of such impairment." *Ex*. 2. No explanation is provided as to how the results allow Dr. Hippensteel to rule out pneumoconiosis as a contributing cause of Claimant's disabling pulmonary impairment. He does not clarify what pulmonary function results would be typical or suggestive of pneumoconiosis causing Claimant's impairment. Dr. Hippensteel also opined that Claimant's pulmonary impairment "is caused by his continued cigarette smoking with possibly even some asthmatic component as shown by the reversibility, so these are not diseases that are associated with simple pneumoconiosis, and I think that the finding are [sic] compatible with causation by those two factors and not by coal workers' pneumoconiosis." Dr. Hippensteel notes reversibility, but no reversibility was seen in the pulmonary function test he conducted and interpreted. Pneumoconiosis is eliminated as a possible cause without clarifying why pneumoconiosis, smoking, and asthma cannot coexist as causative factors. Moreover, reversibility that was diagnosed through other testing was interpreted as only partial and does not exclude an underlying chronic condition such as pneumoconiosis. Dr. Hippensteel's opinion as to causation is accorded little weight due to the failure to explain why pneumoconiosis is excluded as a contributor.

Of the two remaining medical opinions, Dr. Castle concluded that Claimant's total disability is no way caused by his pneumoconiosis while Dr. Rasmussen found that pneumoconiosis contributes significantly to Claimant's disabling pulmonary impairment. It is determined that Dr. Rasmussen's opinion is entitled to greater probative weight for the following reasons.

Dr. Castle found Claimant to have pneumoconiosis resulting from his work in the mines and found Claimant to be totally disabled, but offers no explanation for how he completely ruled out Claimant's coal workers' pneumoconiosis as a contributing cause of his disabling pulmonary impairment. *See Cannelton Industries, Inc. v. Director, OWCP*, Case No. 03-1232 (4th Cir. Apr. 5, 2004) (unpub.) (finding it proper to accord less weight to a medical opinion that failed to explain how the Claimant's years of exposure to coal dust were eliminated as a possible cause of

the miner's totally disabling bronchitis). Dr. Castle attributes Claimant's disabling pulmonary impairment to "cigarette smoke-induced emphysema with an asthmatic component." According to Dr. Castle, although Claimant has pneumoconiosis, it is in no way a cause or contributor to his disabling lung impairment, even though Dr. Castle found Claimant's exposure to coal dust to be "significant." He provides no explanation of how Claimant's pneumoconiosis affects his pulmonary impairment. Dr. Castle based his opinion as to etiology on the obstructive nature of Claimant's impairment, its reversibility, and on Claimant's carboxyhemoglobin levels. However, none of these reasons rule out pneumoconiosis as a contributing cause of Claimant's pneumoconiosis. Dr. Castle stated that Claimant's impairment was obstructive rather than restrictive and that "when coal workers' pneumoconiosis causes impairment, it generally does so by causing a mixed, irreversible obstructive and restrictive ventilatory defect." The definition of legal pneumoconiosis provided in the regulations specifically states, "any chronic restrictive *or* obstructive pulmonary disease arising out of coal mine employment." 20 C.F.R. § 718.201(a)(2) (emphasis added). Thus, pneumoconiosis can be either restrictive or obstructive. It does not have to be both, and restriction is not required. Furthermore, while Claimant did exhibit some reversibility in a number of the pulmonary function studies, post-bronchodilator reversibility does not mean that Claimant's disability in not caused, in part, by his pneumoconiosis. In *Consolidation Coal Co. v. Swiger*, Case No. 03-1971 (4th Cir. May 11, 2004) (unpub.), the court upheld the administrative law judge's finding that reversibility of pulmonary function values after use of a bronchodilator does not preclude the presence of disabling coal workers' pneumoconiosis. The reversibility seen in several of the pulmonary function studies can be explained by the asthmatic component found by Dr. Castle and the hyperactive airways disease found by Dr. Rasmussen. Dr. Castle fails to explain how an asthmatic component can eliminate pneumoconiosis as an additional cause of the impairment. The pulmonary function tests show that Claimant has a residual impairment even after administration of bronchodilators. *See* Dr. Rasmussen's March 18, 2004, and April 5, 2005, reports (only partial reversibility of Claimant's obstructive impairment post-bronchodilator); Dr. Hippensteel's March 17, 2006, report (no improvement in pulmonary function post-bronchodilator). Next, Dr. Castle contends that Claimant's carboxyhemoglobin level indicates that Claimant has been exposed to cigarette smoke. That Claimant is and has been a smoker is not contested. A high carboxyhemoglobin level does not rule out the possibility that Claimant's pneumoconiosis is also a cause of his pulmonary impairment. For the above reasons, Dr. Castle's opinion as to the etiology of Claimant's total disability is accorded less weight than that of Dr. Rasmussen.

Greater weight is given to Dr. Rasmussen's opinion because it is the better reasoned and documented opinion of record. Like Dr. Castle, Dr. Rasmussen found Claimant to be suffering from both pneumoconiosis and a totally disabling pulmonary impairment. Dr. Rasmussen stated that the two risk factors for Claimant's impairment are his smoking and his occupational dust exposure. According to Dr. Rasmussen, both factors independently and additively caused Claimant's impairment with the coal mine dust exposure making a significant contribution. He found that Claimant exhibits evidence of hyperactive airways disease which makes him more susceptible to the effects of coal dust exposure. Hyperactive airways disease explains the reversibility seen in several of the pulmonary function studies. Dr. Rasmussen contended that Claimant's pneumoconiosis "contributes significantly to [his] disabling chronic lung disease." Dr. Rasmussen's opinion is better supported as he provides a review of the medical literature reporting that both cigarette smoke and coal dust exposure can contribute to the pulmonary

pattern Claimant exhibits. Finally, Dr. Rasmussen's opinion is entitled to greater weight due to his qualifications. Although Dr. Rasmussen is not Board-certified in pulmonary diseases as is Dr. Castle, Dr. Rasmussen has worked extensively in the area of black lung disease since 1969. In that same year, he was presented with the American Public Health Association Presidential Award for "exceptional service in the fight against 'black lung.'" Dr. Rasmussen is "an acknowledged expert in the field of pulmonary impairments of coal miners." 1972 U.S. Code Cong. Adm. News 2305, 2314. Due to Dr. Rasmussen's long-term and highly specialized experience in the area of coal workers' pneumoconiosis, his opinion as to the etiology of Claimant's total disability is accorded the greatest weight. *See Burns v. Director, OWCP*, 7 B.L.R. 1-597 (1984) (the qualifications of physicians are relevant in assessing the probative values of their opinions). Thus, the medical opinion evidence supports a finding of the requisite causal link between Claimant's pulmonary disability and his pneumoconiosis.

Claimant is entitled to benefits because he has met his burden of establishing by a preponderance of the evidence the four required element of the standard under 20 C.F.R. § 718.

Onset of Benefits

Claimant is entitled to benefits commencing on the date the medical evidence first establishes that he became totally disabled due to pneumoconiosis or, if such a date cannot be determined from the record, the month in which the miner filed his claim, which is July 1999. 20 C.F.R. § 725.503 (2005); *Carney v. Director, OWCP*, 11 B.L.R. 1-32 (1987); *Owens v. Jewell Smokeless Coal Corp.*, 14 B.L.R. 1-47 (1990). Moreover, it is noteworthy that the date of the first medical evidence of record indicating total disability does not establish the onset date; rather, such evidence only indicates that the miner became totally disabled at some prior point in time. *Tobrey v. Director, OWCP*, 7 B.L.R. 1-407, 1-409 (1984); *Hall v. Consolidation Coal Co.*, 6 B.L.R. 1-1306, 1-1310 (1984).

In this case, the earliest medical determination of total disability due to pneumoconiosis is Dr. Rasmussen's March 18, 2004, report. Dr. Rasmussen's diagnoses of clinical and legal pneumoconiosis are each supported by a preponderance of the evidence in the record. His determination that Claimant suffers from a totally disabling respiratory impairment was supported by the pulmonary function and blood gas studies revealing an obstructive ventilatory pattern and moderate impairment of oxygen transfer at rest.

Between July 1999, the date of claim filing, and March 18, 2004, the date of Dr. Rasmussen's report, the record provides uncontradicted medical evidence showing that Claimant was not totally disabled due to pneumoconiosis. Dr. Vasudevan's September 16, 1999, report found neither pneumoconiosis nor total disability. *Dx*. 2. While the X-ray relied upon by Dr. Vasudevan was later reread as positive by more qualified physicians, total disability was not established because the pulmonary function and blood gas tests did not produce qualifying results and Dr. Vasudevan concluded that Claimant was not totally disabled. Thus, the filing date of July 1999 cannot be used for the commencement of benefits since Dr. Vasudevan's report establishes that Claimant was not totally disabled after the claim was filed. *See Edmiston v. F & R Coal Co*., 14 B.L.R. 1-65 (1990).

Upon review of the record in this case, the onset date can be determined from Dr. Rasmussen's March 18, 2004, report finding Claimant totally disabled due to pneumoconiosis. Therefore, benefits are payable from March 2004, the month in which Dr. Rasmussen's report was issued. Accordingly,

ORDER

IT IS ORDERED that:

1. The claim for benefits filed by E.V. is granted;

2. Employer shall pay to Claimant all benefits to which he is entitled under the Act commencing as of March 2004, to be augmented by reason of his dependent wife and step-children;

3. The District Director shall make the appropriate determination on the period of time during which Claimant's step-children qualified as dependents; and

4. Within 30 days of the date of issuance of this *Decision,* Claimant's counsel shall file, with this Office and with opposing counsel, a petition for a representatives' fees and costs in accordance with the regulatory requirements set forth at 20 C.F.R. § 725.366 (2005). Counsel for the Director and for Employer shall file any objections with this Office and with Claimant's counsel within 20 days of receipt of the petition for fees and costs. It is requested that the petition for services and costs clearly provide (1) counsel's hourly rate with supporting argument or documentation, (2) a clear itemization of the complexity and type of services rendered, and (3) that the petition contains a request for payment for services rendered and costs incurred before this Office only as the undersigned does not have authority to adjudicate fee petitions for work performed before the district director or appellate tribunals. *Ilkewicz v. Director, OWCP*, 4 B.L.R. 1-400 (1982).

A

Thomas M. Burke
Associate Chief Administrative Law Judge

NOTICE OF APPEAL RIGHTS: If you are dissatisfied with the administrative law judge's decision, you may file an appeal with the Benefits Review Board ("Board"). To be timely, your appeal must be filed with the Board within thirty (30) days from the date on which the administrative law judge's decision is filed with the district director's office. *See* 20 C.F.R. §§ 725.478 and 725.479. The address of the Board is:

Benefits Review Board
U.S. Department of Labor
P.O. Box 37601
Washington, DC 20013-7601

Your appeal is considered filed on the date it is received in the Office of the Clerk of the Board, unless the appeal is sent by mail and the Board determines that the U.S. Postal Service postmark, or other reliable evidence establishing the mailing date, may be used. *See* 20 C.F.R. § 802.207. Once an appeal is filed, all inquiries and correspondence should be directed to the Board.

After receipt of an appeal, the Board will issue a notice to all parties acknowledging receipt of the appeal and advising them as to any further action needed.

At the time you file an appeal with the Board, you must also send a copy of the appeal letter to Allen Feldman, Associate Solicitor, Black Lung and Longshore Legal Services, U.S. Department of Labor, 200 Constitution Ave., NW, Room N-2117, Washington, DC 20210. *See* 20 C.F.R. § 725.481. If an appeal is not timely filed with the Board, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 20 C.F.R. § 725.479(a).

Attachment 1

COAL MINE (BLBA) PROCEDURE MANUAL

AVERAGE EARNINGS OF EMPLOYEES IN COAL MINING		
Year	**Yearly (125 days) $**	**Daily $**
2004	21,570.00	172.56
2003	19,900.00	159.20
2002	19,640.00	157.12
2001	19,040.00	152.32
2000	19,090.00	152.72
1999	19,340.00	154.72
1998	19,160.00	153.28
1997	19,010.00	152.08
1996	18,740.00	149.92
1995	18,440.00	147.52
1994	17,760.00	142.08
1993	17,260.00	138.08
1992	17,200.00	137.60
1991	17,080.00	136.64
1990	16.710.00	133.68
1989	16,250.00	130.00
1988	15,940.00	127.52
1987	15,750.00	126.00
1986	15,390.00	123.12
1985	15,250.00	122.00
1984	14,800.00	118.40
1983	13,720.00	109.76
1982	12,698.75	101.59
1981	12,100.00	96.80
1980	10,927.50	87.42
1979	10,878.75	87.03
1978	10,038.75	80.31
1977	8,987.50	71.90

1976	8,008.75	64.07
1975	7,405.00	59.24
1974	6,080.00	48.64
1973	5,898.75	47.19
1972	5,576.25	44.61
1971	5,008.75	40.07
1970	4,777.50	38.22
1969	4,261.25	34.09
1968	3,801.25	30.41
1967	3,662.50	29.30
1966	3,438.75	27.51
1965	3,222.50	25.78
1964	3,031.25	24.25
1963	2,835.00	22.68
1962	2,717.50	21.74
1961	2,645.00	21.16
(See BLBA PM 2-700.11a and 14a(3)		